

**REQUEST FOR
ACTION BY:**

TOWN OF CLARENCE, N.Y.

- ☒ Appeal Board
☐ Planning Board
☐ Town Board

- ☒ Appeal
☐ Rezone
☐ Revise Ordinance
☐ Subdivision
☐ Limited Use Permit
☐ Other

Rec'd. by: Jonathan Bleuer

Date September 2, 2016

Action Desired Applicant requests an interpretation reversing the Town Board's issuance on August 10, 2016, of an approval of the request of the Applicant, the Clarence Hollow Bistro, located at 10641-10647 Main Street for a site plan amendment as per recommendation of the Planning Board for a parking lot wall.

Reason Town Code Reference:
§229-163 (E)

PLEASE PRINT

Name	Richard M. Scherer, Jr., Esq.		
Address	50 Fountain Plaza, suite 1700		
	Buffalo	NY	14202
Town/City		State	Zip
Phone	716-853-5100		
Signed	SIGNATURE ON FILE		

Requests for action on zoning should be filled out completely in above spaces if practicable; otherwise give brief description and refer to attached papers. The complete request with all necessary plans, maps, signatures, should be filed with the Secretary of the Planning Board. Requests (except appeals) may be filed with the Town Clerk or Town Board, but will generally be referred to Planning Board with subsequent loss of time.

Initial Action

Approved ☐
Rejected ☐ by on 20
Approved ☐
Rejected ☐ by on 20
Published (Attach Clipping) on 20
Hearing Held by on 20

Final Action Taken

Approved ☐
Rejected ☐ by on 20
Published (Attach Clipping) on 20
Filed with Town Clerk on 20
Filed with County Clerk on 20

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Rec'd. by: Jonathan Blever

Date 9/2/16

Action Desired Roy Olsen, by and through his attorneys, Lippes Mathias Wexler Friedman LLP, brings the present appeal to the Town of Clarence Zoning Board of Appeals seeking an interpretation reversing the Town Board's issuance on Aug. 10, 2016, of an approval of the request of the Applicant, The Clarence Hollow Bistro, located at 10641-10647 Main Street, Clarence, NY, 14031, for a Site Plan Amendment as per recommendation of the Planning Board for a parking lot wall, as per the submitted drawings from Sutton Architects dated July 11, 2016.

Reason See attached Exhibit A

PLEASE PRINT

Name Richard M. Scherer, Jr., Esq.
c/o Lippes Mathias Wexler Friedman LLP
Address 50 Fountain Plaza, Suite 1700
Buffalo NY 14202
Town/City State Zip
Phone 716-853-5100
Signed Richard M. Scherer, Jr.

Requests for action on zoning should be filled out completely in above spaces if practicable; otherwise give brief description and refer to attached papers. The complete request with all necessary plans, maps, signatures, should be filed with the Secretary of the Planning Board. Requests (except appeals) may be filed with the Town Clerk or Town Board, but will generally be referred to Planning Board with subsequent loss of time.

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EXHIBIT A

A. Introduction.

The present appeal seeks an interpretation reversing the Town Board's issuance on Aug. 10, 2016, of an approval of the request of the Applicant, The Clarence Hollow Bistro, located at 10641-10647 Main Street, Clarence, NY, 14031 (the "property"), for a Site Plan Amendment as per recommendation of the Planning board for a parking lot wall, as per the submitted drawings from Sutton Architects dated July 11, 2016. Copies of these drawings are attached hereto as **Exhibit A-1**. The Zoning Board of Appeals ("ZBA") has the authority to hear an appeal of a decision by the Town Board pursuant to Clarence Town Code §229-163(E).

Roy Olsen is the owner of 4888 Sawmill Road, Clarence, New York 14031, which is located southeast of the property. Mr. Olsen, an aggrieved party, seeks the reversal of the decision to modify the Site Plan on 2 grounds: (1) the issuance of the Site Plan Amendment violates the Clarence Master Plan; and (2) the issuance of the Site Plan Amendment violates Town of Clarence zoning laws.

B. The Permit violates the Clarence Master Plan.

With regard to the Clarence Master Plan, the Site Plan Amendment is in direct violation of Clarence Town Code § 81-3, which provides that "[a]ny proposed land use shall be in accordance with the Comprehensive Plan (adopted as the Master Plan of 2015 on August 8, 2001), and any amendment thereto" As discussed below, however, the project permitted to proceed under the Site Plan Amendment violates the Clarence Master Plan due to inappropriate parking design and setbacks.

The Clarence Master Plan of 2015 states "[f]or any use proposed which requires demolition of an existing structure, *the standard Commercial Zone requirements as to setback and parking will be required*, with parking to the rear of any buildings." Town of Clarence Master Plan 2015, p. 13 (emphasis added). Importantly, the Site Plan initially approved by the Town Board required demolition of certain buildings, and thus, the standard Commercial Zone requirements are applicable.

The Commercial Zoning requirements for parking are provided by Town Code § 229-88. Subsections B, set forth below, is applicable to the present appeal:

- B. Parking areas shall be screened from view of the street to the greatest degree possible. Screening should be continuous and should conceal the parking area(s) from the street. *Methods of screening may include stacked stone walls, picket fences, evergreen or deciduous hedges, other suitable landscape materials or a combination of materials.* All screening should be located inside the applicant's property boundary and should not encroach onto the public sidewalk. Screening must not limit a driver's visibility of the sidewalk or street when exiting any off-street parking lot. (emphasis added).

The Site Plan Amendment approved by the Town Board violates Town Code § 229-88(B) because the steel sheet piles contemplated by the plan are not an approved method of screening, and cannot be considered "suitable landscape materials." The methods of screening set forth in the Town Code include permanent, aesthetically pleasing materials. Steel pilings are a temporary stop-gap measure used for convenience during heavy construction. Steel pilings are not intended for permanent installation as a landscape material, and are therefore inappropriate.

The Site Plan Amendment also violates the Town Code with regard to setbacks, as the setbacks provided for in the Town Code §229-87(C)(1-4) have not been followed.

Because steel pilings are not an appropriate landscape material, and because the parking lot approved by the Site Plan Amendment does not comply with required setback requirements, the ZBA should reverse the Town Board's issuance of the Site Plan Amendment.

C. The Site Plan Amendment violates Town of Clarence zoning laws.

With regard to the Town of Clarence zoning laws, the Site Plan Amendment was issued in violation of the Traditional Neighborhood and Clarence Hollow Overlay zoning laws. Pursuant to the Town of Clarence Official Zoning Map (2014), the Property is located in area designated as "Traditional Neighborhood" and Clarence Hollow Overlay. As a result, the zoning requirements for the Traditional Neighborhood Area and Clarence Hollow Overlay District are applicable.

First, the Site Plan Amendment violates §229-109 of the Clarence Hollow Overlay District zoning law because the ugly, temporary steal pilings approved by the Town Board do not:

A. Preserve the character of the Clarence Hollow community as a hamlet-style area with mixed uses set in an historical context.

...

E. Ensure that new buildings or building modifications are harmonious with surrounding structures in their use, scale and design

F. Encourage the preservation of existing building and sites in a manner that maintains the historic and distinctive character of the hamlet.

Clarence Town Code §229-109. The Site Plan Amendment completely fails to preserve the historical character of the district, is not harmonious with surrounding buildings, and introduces an ugly, modern, and industrial aesthetic not in keeping with the character of Clarence Hollow.

In addition, Clarence Town Code §229-113(A)(5) expressly states, "[b]lank concrete block walls or **sheet metal at street level shall be avoided.**" Similarly, §229-113(B)(1)(d) states, "[w]alls which are visible from the street may be constructed of stone, brick, stucco or a combination of masonry materials and should be in keeping with the character of the surrounding architecture."

Here, the temporary, rusting steel pilings approved by the Site Plan Amendment clearly violate the express provisions of the Clarence Hollow Overlay District, do not accord with approved wall materials, and are not in keeping with the character of surrounding architecture. The Site Plan Amendment therefore directly violates the Clarence Hollow Overlay District zoning requirements.

The Site Plan Amendment also violates Article VII of the Clarence Zoning Law, which sets for the zoning standards for the Traditional Neighborhood District. First and foremost, §229-67 of the Clarence Town Code requires that, "All development and redevelopment requiring site plan approval must meet the requirements of any zoning overlay that exists in the area of development." As explained above, the Site Plan Amendment violates multiple requirements of the Clarence Hollow Overlay District. The Site Plan Amendment therefore violates the Traditional Neighborhood zoning requirements as well.

In addition, the corrugated steel pilings are a prohibited wall material pursuant to §229-67(C)(4) of the Traditional Neighborhood District zoning requirements. Subsection 67(C)(4) states, "Walls shall be clad in stone, brick, marble, cast concrete, vinyl siding, drivit, and hardboard or other cement paneling. **Metal paneling is prohibited.**" §229-67(C)(4) (emphasis added). Here, the corrugated, untreated, rusting metal paneling approved by the Site Plan Amendment directly contradicts the wall material requirements of the Traditional Neighborhood District.

In summary, the ZBA should reverse the decision of the Town Board to approve the Site Plan Amendment because the Site Plan Amendment violates the express provisions of both the Clarence Hollow Overlay District and Traditional Neighborhood District Zoning Laws.

D. The Site Plan Amendment, as proposed and approved by the Town Board, did not include the planting of Myrtle or the construction of a vinyl fence.

On August 10, 2016, the Town Board was asked to consider the Site Plan Amendment as per the submitted drawings from Sutton Architects dated July 11, 2016. See **Exhibit A-1**. As set forth in the Town Board meeting minutes for August 10, 2016, formal agenda provided as follows:

Applicant is proposing to amend the conditions of the previous approval by providing a different detail for the retaining wall along the east property line of the project. The proposal will modify the original wall from wood to a steel-retaining wall, cutting the steel pilings and introducing intermittent stone sections and a wood "railing" along the east side as a cap. As the Town Board established and approved the conditions associated with the original project, any amendment will require Town Board authorization. The Planning Board has forwarded a recommendation on a proposed new design.

A copy of the meeting minutes are attached hereto as **Exhibit A-2**. Absent from this agenda item was any consideration for a vinyl fence on the West side of the Clarence Hollow Bistro property

or the planting of Myrtle on the South side of the Clarence Hollow Bistro property. Moreover, the formal approval (albeit improper for the reasons set forth above) did not include the approval of a vinyl fence or the planting of Myrtle. To the extent the Town considers these items to be approved, it is Mr. Olsen's position that such items would constitute a change to the original project approved by the Town and must, therefore, be proposed as formal site plan amendments for consideration by the Town Board.

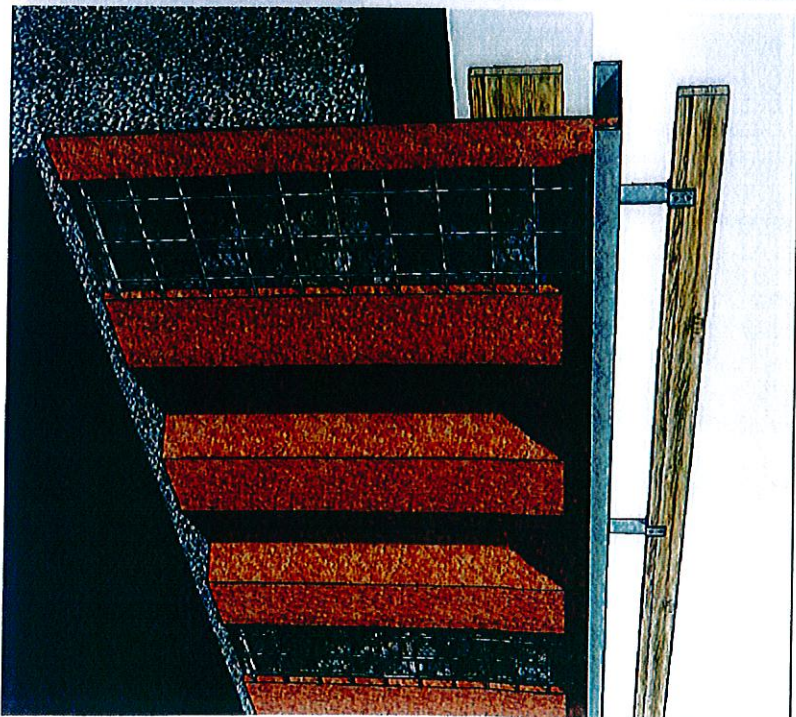
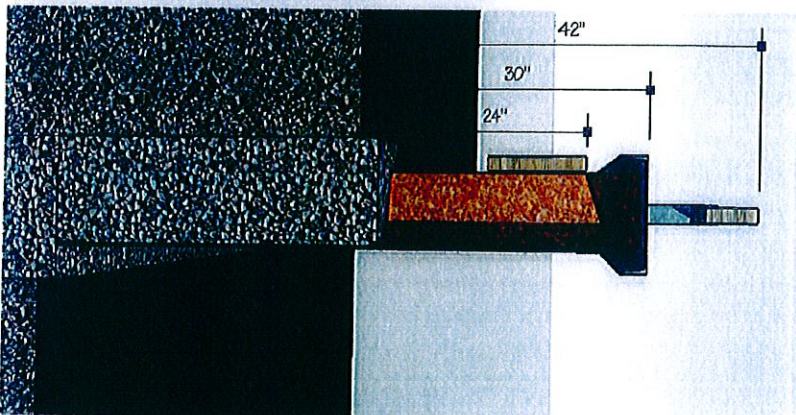
E. Demand for stay of all construction pending final decision by the Zoning Board of Appeals.

Pursuant to New York Town Law §267-(A)(6), Mr. Olsen demands a stay of all proceedings in furtherance of the action appealed from. Specifically, Mr. Olsen demands that all work being conducted at the property pursuant to the Site Plan Amendment be immediately suspended pending the ZBA's final disposition of this appeal. This work includes, but is not limited to, any work on the retaining wall, fencing, wheel stops, or planting of Myrtle.

F. Conclusion.

As set forth above, the Site Plan Amendment should not have been issued given that it violates the Clarence Master Plan and applicable Town of Clarence zoning laws. For this reason, Mr. Olsen requests an interpretation reversing the issuance of the Site Plan Amendment.

EXHIBIT A-1



SUTTON
Architecture
"Design is Everything."

5409 Main Street
(Second Floor)
Williamsville, NY 14221
(716) 932-7156 Fax 932-7873

Hollow Bistro
10641 Main St
Clarence, NY

[illegible]

T 4-286

Retaining Wall

[illegible]



5409 Main Street
(Second Floor)
Williamsville, NY 14221
(766) 932-7156 Fax 932-7873

Hollow Bistro
10641 Main St
Clarence, NY

DATE	10/1/14
BY	10/1/14
CHECKED	10/1/14
APPROVED	10/1/14
REVISIONS	
NO.	DESCRIPTION
1	10/1/14
2	10/1/14
3	10/1/14
4	10/1/14
5	10/1/14
6	10/1/14
7	10/1/14
8	10/1/14
9	10/1/14
10	10/1/14

14-286	
Retaining Wall	
Project No.	10641 Main St
Client Name	Hollow Bistro
Site Name	Clarence, NY

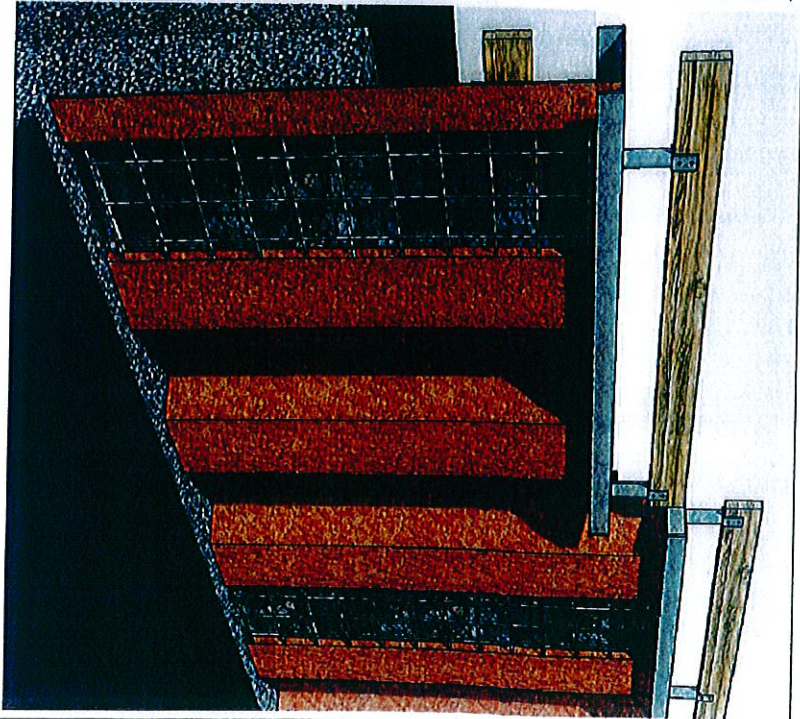
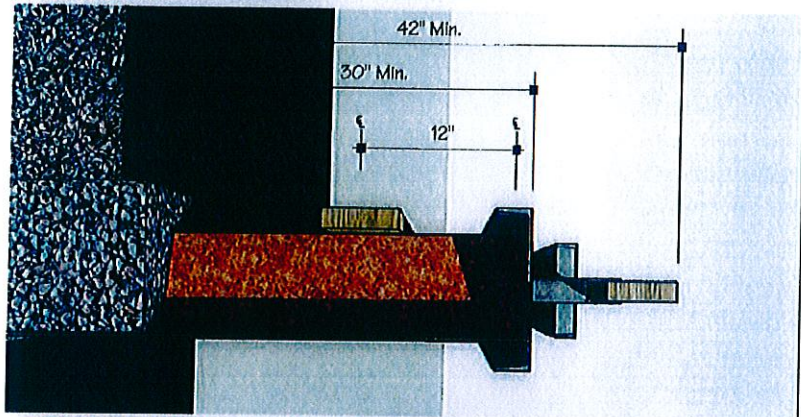
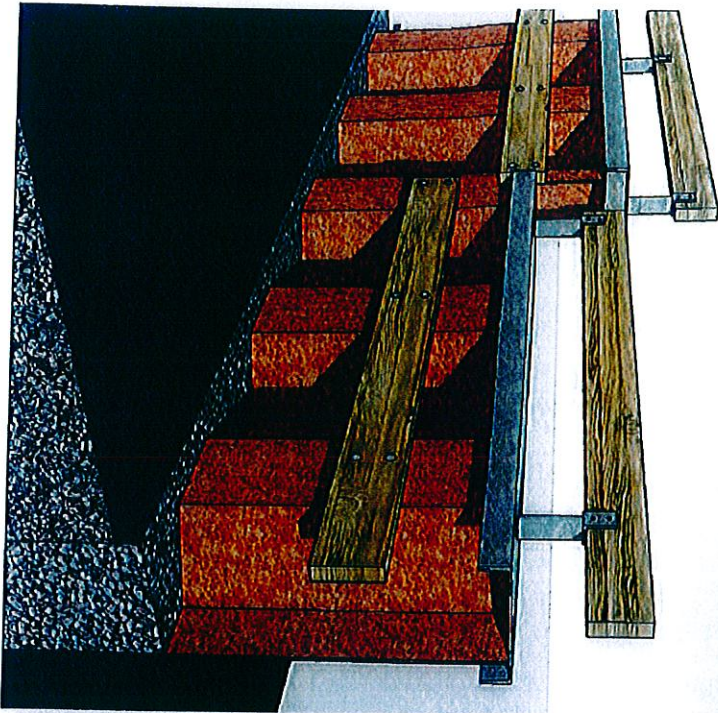


EXHIBIT A-2

A Work Session of the Town Board of the Town of Clarence was held on Wednesday, August 10, 2016 at Clarence Town Hall, One Town Place, Clarence, New York.

Supervisor Patrick Casilio called the meeting to order at 5:30 PM. Members of the Town Board present were Councilmember's J. Paul Shear, Christopher Greene, Robert Geiger, and Peter DiCostanzo. Other Town Officials present were Director of Community Development James Callahan, Junior Planner Jonathan Blauer, Assistant to the Supervisor Karen Jurek, Town Attorney Lawrence Meckler, Town Engineer Tim Lavocat, Senior Building Inspector David Metzger, Director of Administration and Finance Pamela Cuvillo and Planning Board Chairman Robert Sackett.

Motion by Supervisor Casilio, seconded by Councilman Greene to enter into Executive Session pursuant to § 105(1) F the employment history of a particular person. Upon roll call -- Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Casilio, seconded by Councilman Greene to adjourn the Executive Session at 5:49PM. Upon roll call -- Ayes: All; Noes: None. Motion carried. No action taken.

The Work Session reconvened at 5:50PM.

Director of Community Development – James Callahan

Public Hearings:

A Public Hearing is scheduled for 7:15 PM to consider renewal of existing Temporary Conditional Permits. Applicants have submitted necessary application paperwork along with payment for renewal. The Town Board has the authority to approve Temporary Conditional Permits up to 5-years. Mr. Callahan stated that no formal complaints have been filed against any of the applicants. Councilman Shear commented on the fence at Murphy Browns.

Formal Agenda items:

Clarence Hollow Bistro 10641 Main Street

Applicant is proposing to amend the conditions of the previous approval by providing a different detail for the retaining wall along the east property line of the project. The proposal will modify the original wall from wood to a steel-retaining wall, cutting the steel pilings and introducing intermittent stone sections and a wood "railing" along the east side as a cap. As the Town Board established and approved the conditions associated with the original project, any amendment will require Town Board authorization. The Planning Board has forwarded a recommendation on a proposed new design.

Work Session items for consideration August 24, 2016:

Douglas McKinnon 6575 Meghan Way

Applicant is requesting a fireworks permit for August 28, 2016. The proposed site is located on a private drive on the south side of County Road west of Conner Road. The applicant has provided all necessary paperwork however, the fire chief has not signed off. The Town Board has the authority to issue Fireworks Display Permits.

Director of Community Development James Callahan informed the Board that he would like to get the Clarence 2030 Comprehensive Plan filed. The final draft is ready for review. It will be on the agenda in two weeks so the Town Board can initiate the coordinated review under SEQRA and get the process going.

Supervisor Patrick Casilio

Approve the request for a neighborhood Block Party on August 21, 2016 at Bergtold Road and Westerwald Ln.

Approve the request for unpaid leave of absence for Karen Smith. Karen will be returning to work on August 15th.

Councilman Casilio is working on a budget for Pickle Ball Courts. There is a possibility of putting six pickle ball courts on one of the tennis courts at Town Place Park.

Councilman Casilio would like the Board to consider obtaining a RFP for the removal of the house located at 10375 Main Street (former McIver house).

The Town Board has received correspondence from the licensed waste haulers in the Town. A decision will have to be made as to what the town is proposing to them as a condition for them to be licensed in the Town. Councilman Shear has accumulated a fair amount of information with regard to the haulers and how many customers they service. A special meeting will be scheduled in the near future to discuss this further.

The Kathy Hallock meeting room is going to be updated, a Smart Screen TV will be installed.

A Department Head meeting was held this morning, the Budget Schedule was distributed. Budgets are due September 2nd, Supervisor Casilio will work with Department Heads on an individual basis. Supervisor Casilio is anticipating presenting a balanced budget to the Town Board by September 30th. The Justice Court budget will be different half way through next year, they will not be in the town hall (will relocate to new Police and Court Facilities building) and will require more personnel for Court.

The Youth Bureau is sponsoring a Career Exploration Fair on Saturday, August 13th at the Clubhouse. Councilman Geiger will attend.

Supervisor Casilio has three items to discuss in Executive Session regarding the purchase of real property, employment history of a particular person (s) and one Attorney Client item.

Councilman Peter DiCostanzo

Will make a motion to add position of Going Place Van Driver to the Town's cell phone use provision.

Councilman DiCostanzo attended the grand re-opening of the Historical Museum. There are many new improvements.

Next week, the Planning Board will review Domenic Piestrak self-storage building project near the former Gypsum Plant. The applicant did not know if he would build a public or a private road because he does not know what the intentions are for the rest of the road. Director of Community Development James Callahan stated that this gets complicated in that the Master Plan identifies a future extension of Harris Hill Road north, it also identifies a trunk sewer line going to the Peanut Line to service the area. These items have to be included in the discussion as you move forward with any project at this location. Town Engineer Lavocat stated that the Board could instruct the applicant to build the road to town standards and still consider it a private road. If and when the long term plan comes to fruition it can be turned back to a public road.

Councilman Robert Geiger

Councilman Geiger thanked Councilman Shear for his contributions to the Historical Museum including items (pictures and videos) from Flight 3407.

The Parks Department along with the Boy Scouts have made some improvements at Beeman Creek Park. Several of the Boy Scouts have cut trails to the creek. Councilman Geiger urged everyone to visit the park.

Councilman Christopher Greene

Will make a motion to consider the request for an increase in Petty Cash for Justice Court.

There has been more discussion at the Conservation Advisory Committee meeting relative to relocating the butterfly garden for safety reasons from Beeman Creek Park to the Town Hall campus after the Police and Court Facilities building is completed.

Councilman Paul Shear

At the July 27, 2016 Work Session there was a brief discussion regarding the debacle at Erie County Water Authority during the water outage. Councilman Shear has brought some information forward relative to quotes from Red Alert to implement a program to alert our residents in the event of an emergency. The Senior Center and the School District have a significant data base, if this information was made available to the Town it would be a way of alerting some of our residents.

Supervisor Casilio stated that the Town has a Reverse 911 system through the County, but the County would not allow the Town to activate it. Our Disaster Coordinators were aware of the situation from the beginning. A meeting was scheduled for August 24th to discuss this further with the Town's Disaster Coordinators however Councilman Shear will be out of town so the meeting will be rescheduled.

Town Engineer Tim Lavocat

Town Engineer Lavocat presented samples of brick to be used on the new Police and Court Facilities building. The sample presented was a mix of brick from the town hall and the library. The Town Board was in agreement with the brick color selected.

The project is on schedule, a minor Change Order will be forthcoming relative to the water system.

Motion by Supervisor Casilio, seconded by Councilman Greene to enter into Executive Session pursuant to § 105(1) F the employment history of a particular person(s), § 105(1) H the proposed sale of real property and several Attorney Client items. Upon roll call -- Ayes: All; Noes: None. Motion carried.

There being no further business, the Work Session adjourned at 6:27PM.

Darcy A. Snyder

Deputy Town Clerk

Motion by Supervisor Casilio, seconded by Councilman Greene to adjourn the Executive Session at 7:00 PM. Upon roll call -- Ayes: All; Noes: None. Motion carried. No action taken.

Regular meeting of the Town Board of the Town of Clarence was held on Wednesday, August 10, 2016 at the Clarence Town Hall, One Town Place, Clarence, New York.

Supervisor Patrick Casilio called the meeting to order at 7:05 p.m. Pledge to the flag was led by Councilman Peter DiCostanzo, followed by a prayer given by Father Yetter of St. Mary's Catholic Church.

Members of the Town Board present were Councilmembers J. Paul Shear, Christopher Greene, Robert Geiger, Peter DiCostanzo and Supervisor Patrick Casilio. Other Town officials present were Director of Community Development James Callahan, Town Attorney Lawrence Meckler and Town Engineer Timothy Lavocat.

Motion by Councilman Shear, seconded by Councilman DiCostanzo to accept the minutes of the work session and regular meetings held July 27, 2016. On the question, Supervisor Casilio said he will recuse as he was not present. Upon roll call – Ayes: Councilmembers Shear, Greene, Geiger and DiCostanzo; Noes: None. Recuse: Supervisor Casilio. Motion carried.

Supervisor Casilio thanked Deputy Supervisor DiCostanzo for running the last meeting for him at the last hour due to the accident he was involved in.

Supervisor Casilio said he met with the department heads today regarding the 2017 budget. He will be successful in adopting a budget that falls within the .68% tax cap. The preliminary budget will be turned over to the Town Clerk by September 30th.

Motion by Supervisor Casilio, seconded by Councilman Geiger to approve the request for a neighborhood Block Party to be held on August 21, 2016 from 3:00 p.m. until 8:00 p.m. on Autumn Trail.

On the question, Supervisor Casilio said there will be approximately 30+/- persons attending. The street will be blocked as indicated on the map attached to the application (from Bergtold to Westerwald). The applicant will notify the appropriate authorities and agencies of the event including the Clarence Highway Department.

Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Supervisor Casilio, seconded by Councilman Shear to grant an unpaid leave of absence to Karen Smith from her position as Senior Clerk Typist in the Engineering Department from August 10, 2016 to and including August 12, 2016.

On the question, Supervisor Casilio said the granting of this request is due to extreme, extenuating circumstances for Ms. Smith and is subject to the provisions of Article 24 – sections 1 through 6 of the Town of Clarence White Collar Unit Contract. Any future requests by Ms. Smith or other persons in the future will be taken on a case-by-case basis at the discretion of the Town Board. The Town Board is not creating a precedence setting policy by granting this request.

Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Greene to add the Going Places Van Driver to the list of positions that are provided cell phones by the Town for use within the scope of his/her employment.

On the question, Councilman DiCostanzo said the Going Places Van travels to the City of Buffalo and other towns on a regular basis on Monday, Wednesday and Thursday providing transportation to Town residents that meet the criteria to use the service. The current driver does not own a cell phone. If there was ever an emergency or break down the driver should have a phone available. The Deputy Security Guard turned in his cell phone as he was not using it. This phone will be transferred to the Van Driver and let her know for Town use only.

Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman DiCostanzo thanked Tom Steffan, Chairman of the Clarence Historical Society for inviting them to the re-opening celebration at the Historical Museum. The museum looks great.

Councilman DiCostanzo thanked Ethan Powers from the Bee for putting information in about the new stop signs at Strickler and Greiner Roads. People are going through it all the time.

There were reports of items stolen from unlocked vehicles around Town again. People have to lock their cars.

Councilman DiCostanzo said he spoke to Jim Burkard of the Parks Department about the missing merry-go-round at Sunset Park. Mr. Burkard said it is being repaired.

Supervisor Casilio said we are still averaging an accident every two weeks at the Strickler and Greiner intersection. His accident was at Main and Susan Drive with someone running into him in the traffic backed up from Harris Hill Road. Eight days later it happened to someone else at the same location.

The foundation work for the traffic light at Thompson and Greiner will start soon and hopefully it will be better at that intersection.

Councilman Geiger said the Taste of Clarence was a great success. We did have a drone flying over, but it was lost.

He reported that Councilman Shear donated some items for the 3407 display at the museum.

Councilman Geiger said the boy scouts from Troop 27 have been very active at Beeman Creek Park. Nick Wright did the flag pole with solar lighting. Steve Recktenwald blazed two new trails with a strong support group of over 25 helpers.

Supervisor Casilio said the Home Show starts this weekend. The association has been working with the Town of Clarence to make sure it is safe and not an inconvenience to the residents.

Motion by Councilman Greene, seconded by Councilman DiCostanzo to approve the request from the Town Justices to increase the amount of petty cash for each Judge from \$50 to \$100 effective August 11, 2016. Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman Shear said parking for the Home Show will be at the Middle School with shuttle buses to the site.

Councilman Shear thanked Ethan from the Bee and the Town Clerk for assisting him in judging the desserts at the Taste of Clarence.

Councilman Shear said the 3407 donation to the museum were a video and photos given to him by Charles Anderson, a photographer.

Supervisor Casilio welcomed Alexander Eaton representing the Chamber of Commerce.

Public Participation

Rich Scherer, attorney representing Roy Olsen said he would like to speak regarding item 12 for the Hollow Bistro. They understand that the change being suggested by the Planning Board is the retaining wall on the east property line from a wood structure to primarily a sheet metal piling. They strongly oppose the change that they feel is not in keeping with the traditional neighborhood district or the historic nature of the Hollow. They believe the metal sheet piling is prohibited by the Town Code §299-67 (c)(4).

Mr. Scherer said they are also proposing a fence along the west property line made from vinyl. They object to this for the same reason and suggest any fences be made of wood.

A Public Hearing was held to consider renewal of the following Temporary Conditional Permits:

- a. Top Notch Automotive, 8355 Goodrich Road
- b. Hoover Automotive, 8417 Transit Road
- c. RJ's Automotive, 10187 Main Street
- d. Ralph Graf Automotive, 9460 Tonawanda Creek Road
- e. Neiman Automotive, 8400 County Road
- f. Carson Automotive, 10589 Main Street
- g. Clarence Pizza Company Outside Dining, 6235 Goodrich Road
- h. Emily's Family Diner Outside Dining, 9980 Main Street
- i. Murphy Browns Outside Dining, 9500 Main Street
- j. Penny Lane Café Outside Dining, 10255 Main Street
- k. Niagara Truck Equipment Outside Display, 8033 Transit Road

- l. Calarco Landscaping, 8558 Stahley Road
- m. Bakowski Landscaping, 5640 Davison Road
- n. Gallagher Landscaping, 9780 Lapp Road
- o. Zbrezny Landscaping, 4951 Kraus Road
- p. Hewson Tree Trimming, 9000 Lapp Road
- q. Bronicz Wood Cutting, 4611 Shisler Road
- r. GCR Landscaping, 5750 Shimerville Road
- s. Burghardt Landscaping, 8694 Lapp Road
- t. Strickland Welding/Fabricating, 5880 Salt Road
- u. Seitz Paving, 8346 County Road

James Callahan said all are currently operating under a Temporary Conditional Permit and are seeking renewal. There are no documented complaints on file.

Supervisor Casilio said we did not request the applicants be present because there are no registered complaints. There was some discussion on limits. There is a concern with Murphy Brown's on the way the area is fenced off.

With no one else speaking to the subject, motion was made by Councilman DiCostanzo, seconded by Councilman Geiger to close the Public Hearing. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Geiger, seconded by Councilman Shear to adopt the following resolution:

RESOLVED, that after a public hearing duly held on August 10, 2016, to consider the renewal of existing Temporary Conditional Permits, the Town Board approves the existing Temporary Conditional Permits uses for the set terms as follows (letters identified on the formal agenda and listed below, with the exception of h.):

a-d and g are renewed for a period of 5 years; e-f are renewed for a period of 3 years; i-j are renewed for period of 3 years and k-s are renewed for 5 years.

- a. Top Notch Automotive, 8355 Goodrich Road
- b. Hoover Automotive, 8417 Transit Road
- c. RJ's Automotive, 10187 Main Street
- d. Ralph Graf Automotive, 9460 Tonawanda Creek Road
- e. Neiman Automotive, 8400 County Road
- f. Carson Automotive, 10589 Main Street
- g. Clarence Pizza Company Outside Dining, 6235 Goodrich Road
- ~~h. Murphy Browns Outside Dining, 9500 Main Street~~
- i. Penny Lane Café Outside Dining, 10255 Main Street
- j. Niagara Truck Equipment Outside Display, 8033 Transit Road
- k. Calarco Landscaping, 8558 Stahley Road
- l. Gallagher Landscaping, 9780 Lapp Road
- m. Zbrezny Landscaping, 4951 Kraus Road
- n. Hewson Tree Trimming, 9000 Lapp Road

On the question, Supervisor Casilio said the time periods are different for the different type uses.

Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman Shear, seconded by Councilman Geiger to adopt the following resolution:

RESOLVED, that after a public hearing duly held on August 10, 2016, to consider the renewal of an existing Temporary Conditional Permit, the Town Board approves the renewal of Murphy Browns for outside dining at 9500 Main Street for the term of six months to allow them to complete the barriers for the outside dining area.

Upon roll call – Ayes: All; Noes: None. Motion carried.

Clarence Hollow Bistro requests a Site Plan Amendment to allow for a redesigned retaining wall at 10641 Main Street. James Callahan said the location is the south side of Main Street between Ransom Road and Sawmill Road consisting of an existing restaurant in the Traditional Neighborhood District. The project has been modified from the original approval. The Planning Board has forwarded a recommendation on the new design.

Dave Sutton, architect said they have gone through an extensive renovation of the restaurant and it has been overall very well received. The outstanding items include the retaining wall on the east property line and the vinyl fence on the west. They discussed architectural elements with the Planning Board such as the vinyl fence. The vinyl fence matches the color scheme of the building. They are including curb stops at each parking space.

Mr. Sutton said the retaining wall was originally proposed as a wood wall, but they were not successful in being able to install it because of concerns of the adjacent neighbor. They would have had to excavate several feet onto the neighbor's property. They were able to install the sheet piling without any impact. They have added wood stops and a decorative rail system. Stone in a wire mesh will be added to every other panel of the sheet pile. The sheet pile will be cut down to varying levels to 42" with the slope of the land. The Planning Board was pleased with their efforts for the enhancements from an architectural standpoint. They feel that they have created a retaining wall that serves the purpose, is code compliant and meets the intent of the decorative materials required for this district.

Councilman Shear said the rail is made out of wood to discourage skateboarders.

Supervisor Casilio asked if the sheet piles are going to be painted.

Mr. Sutton said the intent is to let them rust naturally. It will be more compatible to the wood and stone. It will even out in color over the years.

Councilman Shear asked if the wood is to be painted or stained.

Mr. Sutton said they intend to let it weather naturally.

Supervisor Casilio asked Mr. Callahan if the drawing they see is the recommendation of the Planning Board including the steel. He said it is.

Motion by Councilman Shear, seconded by Councilman Geiger to approve the request of the applicant, the Clarence Hollow Bistro, for a Site Plan Amendment as per the recommendations of the Planning Board for a parking lot wall at 10641 Main Street as per the submitted drawings from Sutton Architects dated July 11, 2016 with the following conditions:

1. Fencing to be installed as per submitted site plan.
2. Wheel stops/curbs to be placed to protect fencing and decorative walls.

Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Greene to approve the following: Clubhouse Applications - A. Clarence Youth Bureau – Sept. 19, 2016; Legion Hall Applications - A. Karl & Sandra Tresino – Aug. 19, 2016; B. Maria Cahlstadt – Nov. 26, 2016 and C. Clarence Democratic Committee – 2017 Monthly Meetings. Upon roll call – Ayes: All; Noes: None. Motion carried.

Motion by Councilman DiCostanzo, seconded by Councilman Greene that after proper audit and review by the Town Board, the following bills of August 11, 2016 are approved for payment: General Fund - \$93,869.93; Highway Fund - \$32,034.27; Drainage District - \$122.93; Lighting Districts - \$596.75; Capital Fund - \$359,874.65; and Trust & Agency 203 - \$21,587.50 for a total amount of \$508,086.03. Upon roll call – Ayes: All; Noes: None. Motion carried.

Councilman DiCostanzo congratulated the Supervisor on the birth of his second grandchild.

There being no further business, Supervisor Casilio adjourned the meeting at 7:40 p.m.

Nancy C. Metzger
Town Clerk

**REQUEST FOR
ACTION BY:
TOWN OF CLARENCE, N.Y.**

- ☒ Appeal Board
☐ Planning Board
☐ Town Board

- ☒ Appeal
☐ Rezone
☐ Revise Ordinance
☐ Subdivision
☐ Limited Use Permit
☐ Other

Rec'd. by: Planning and Zoning

Date September 28, 2016

Action Desired Applicant requests a variance of 6.5' to allow for a 6' side yard setback for the construction of an attached accessory structure located at 5441 Via Del Sole in the Planned Unit Residential Development zone.

Reason Town Code Reference:
§229-52 (B)

PLEASE PRINT

Representative:	Name <u>Raymond Peters</u>
<u>Kevin Revak</u>	Address <u>5441 Via Del Sole</u>
<u>585-317-9220</u>	<u>Williamsville NY 14221</u>
	Town/City <u>Williamsville</u> State <u>NY</u> Zip <u>14221</u>
	Phone <u>617-921-8994</u>
	Signed <u>SIGNATURE ON FILE</u>

Requests for action on zoning should be filled out completely in above spaces if practicable; otherwise give brief description and refer to attached papers. The complete request with all necessary plans, maps, signatures, should be filed with the Secretary of the Planning Board. Requests (except appeals) may be filed with the Town Clerk or Town Board, but will generally be referred to Planning Board with subsequent loss of time.

Initial Action

Approved ☐ _____ on _____ 20____
 Rejected ☐ by _____ on _____ 20____
 Approved ☐ _____ on _____ 20____
 Rejected ☐ by _____ on _____ 20____
 Published (Attach Clipping) _____ on _____ 20____
 Hearing Held by _____ on _____ 20____

Final Action Taken

Approved ☐ _____ on _____ 20____
 Rejected ☐ by _____ on _____ 20____
 Published (Attach Clipping) _____ on _____ 20____
 Filed with Town Clerk _____ on _____ 20____
 Filed with County Clerk _____ on _____ 20____



* note the parcel lines displayed are approximate

5441 Via Del Sole



Proposed attached accessory structure with 6' side yard setback



